

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL J. QUILLING,

Plaintiff,

File No. 1:03-CV-236

v.

HON. ROBERT HOLMES BELL

TRADE PARTNERS, INC., et al.,

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND APPROVING SALE OF CALIFORNIA PROPERTY**

Magistrate Judge Ellen S. Carmody filed a Report and Recommendation on September 13, 2005, recommending that the Receiver's motion to approve sale of California property (Docket # 1071) be granted. (Docket # 1089). No objections have been filed pursuant to 28 U.S.C. § 636(b)(1)(C). The Court agrees with the recommendation. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation dated September 13, 2005, (Docket # 1089) is **APPROVED AND ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that the Receiver's motion to approve a contract of sale for certain property located in Marysville, Yuba County, California, and known as 584 Saddleback Drive, Marysville, California, 95091 (the "California Property") in accordance with the terms, conditions and provisions of the proposed Contract of Sale by and between Commercial Trade Pool 1, LLC as seller and Sandy and Dave Rottman as purchasers (the "Purchasers") in the form attached to the Receiver's motion as Exhibit "A" (the "Contract of Sale") (Docket # 1071) is **GRANTED**.

IT IS FURTHER ORDERED that:

1. The Contract of Sale is hereby approved, and Receiver Bruce S. Kramer as receiver for Commercial Trade Pool 1, LLC (the "receiver") is hereby authorized to approve and enter into the Contract of Sale, and the Receiver, without the necessity of joinder by any other

person, is hereby authorized to execute for and on behalf of Commercial Trade Pool 1, LLC any and all instruments and documents necessary or appropriate to consummate the sale of the California Property as contemplated by the Contract of Sale.

2. Upon the issuance of this Order, Commercial Trade Pool 1, LLC, acting by and through the Receiver (a) has full limited liability company power and authority to execute and deliver the Contract of Sale and all other documents contemplated thereby, and to consummate the sale of the California Property to the Purchasers notwithstanding any deficiency in limited liability company filing or actions by Commercial Trade Pool 1, LLC, and (b) no consents, approvals or orders (other than this Order) are required for Commercial Trade Pool 1, LLC to consummate the transaction contemplated by the Contract of Sale.

3. The sale and transfer of the California Property contemplated by the Contract of Sale and subject to the provisions hereof will be a legal, valid and effective transfer to the Purchasers of all of the interests of Commercial Trade Pool 1, LLC in and to the California Property.

4. This Order is and shall be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title insurance companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the California Property.

5. Each and every federal, state and local government agency, department or entity is hereby directed to accept the filing of any and all documents or instruments necessary or

appropriate to implement, effectuate or consummate the transaction contemplated by the Contract of Sale.

6. The Receiver, on behalf of Commercial Trade Pool 1, LLC, is authorized to pay at closing and from the proceeds of the sale (a) all property taxes in excess of \$1,000 owed on the California Property for tax years 2004 and earlier, it being understood that the Purchasers have agreed to pay at closing all property taxes owed on the California Property for tax years 2004 and earlier in an amount not to exceed \$1,000, and (b) all existing homeowners' association dues and assessments in excess of \$1,000 owed on the California Property, it being understood that the Purchasers have agree to pay at closing all existing homeowners' association dues and assessments in an amount not to exceed \$1,000.

7. The Receiver, on behalf of Commercial Trade Pool 1, LLC, is authorized to give the Purchasers a credit toward the purchase price of the California Property in an amount equal to the pro rated 2005 property taxes as provided in the Contract of Sale.

8. The sale and transfer of the California Property contemplated by the Contract of Sale and subject to the provisions hereof will be free and clear of all liens, claims, and encumbrances, except for liens to secure payment of 2005 property taxes; *provided* that all liens, claims, and encumbrances asserted against the California Property will attach to the net proceeds of sale to the same extent, validity, and priority as to the California Property.

9. With the exception of any liabilities expressly assumed in the Contract of Sale and liens to secure payment of 2005 property taxes, all persons and entities asserting liens, claims, or encumbrances of any kind or nature against Commercial Trade Pool 1, LLC and/or the California Property as of the date of the closing of the sale of the California Property to the Purchasers as approved in this Order are hereby barred, estopped, and permanently enjoined from asserting any such liens, claims, or encumbrances against the Purchasers and/or the California Property.

10. This Order is and shall be effective as a determination that except as expressly provided in the Contract of Sale and this Order, all liens, claims, and encumbrances against the California Property existing or asserted before closing of the sale to the Purchasers (except for liens to secure payment of 2005 property taxes) have been unconditionally release, discharged, and terminated, and that the conveyances described in the Contract of Sale and this Order have been effected.

11. The Purchasers shall not be deemed successors and shall acquire no successor liability for any obligation of Commercial Trade Pool 1, LLC, or any claims against Commercial Trade Pool 1, LLC, as a result of their purchase of the California Property; the sale of the California Property as authorized in this Order is not a *de facto* merger of the business of Commercial Trade Pool 1, LLC and the Purchasers; the Purchasers' business is not a mere continuation of Commercial Trade Pool 1, LLC's business; and all creditors of Commercial Trade Pool 1, LLC are precluded and estopped from asserting that the Purchasers are successors of Commercial Trade Pool 1, LLC.

12. This Court retains jurisdiction (a) to enforce and implement the terms and provisions of the Contract of Sale, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith, (b) to compel delivery of the California Property to the Purchasers, (c) to resolve any disputes arising under or related to the Contract of Sale, and (d) to interpret, implement and enforce the provisions of this Order.

13. The transaction contemplated by the Contract of Sale is exempt from any transfer, stamp or similar tax or any so-called "bulk sale" law in all necessary jurisdictions arising as a result of or in connection with Commercial Trade Pool 1, LLC's sale and transfer of the California Property to the Purchasers.

Date: September 28, 2005

/s/ Robert Holmes Bell ☐
ROBERT HOLMES BELL ☐
CHIEF UNITED STATES DISTRICT JUDGE